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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/815,856	03/23/2001	John Zimmerman	US 010094	5812

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EXAMINER

BROWN, RUEBEN M

ART UNIT	PAPER NUMBER
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2623

MAIL DATE	DELIVERY MODE
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10/04/2007

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No. 09/815,856	Applicant(s) ZIMMERMAN, JOHN	
	Examiner Reuben M. Brown	Art Unit 2623	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 10 July 2007.
- 2a) ☐ This action is FINAL. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1,2,4-9,11-18 and 21-26 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-2, 4-9,11-18,21-26 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Response to Arguments

1. Applicant's arguments with respect to claims 1-16 have been considered but are moot in view of the new ground(s) of rejection.

With respect to claim 17, examiner points out that the claimed 'synthetic celebrity', amounts to a use argument. In other words, Herz broadly discloses that the customer may choose a celebrity profile, without discussing any particular type of celebrity profile. It is pointed out that the essence of this disclosure of Herz is that the customer may choose to substitute their personal profile with a profile of someone different from their own that they desire. Therefore one particular type of celebrity (i.e., synthetic celebrity), would not make a patentable distinction over a generic celebrity.

However, Herz does not say if whether the celebrity was real or created. Cook (Abstract; Para [0003-0004] & [0009-0018]) teaches the benefits of creating a synthetic profile, which allows the user to create a profile from a disparate range of characteristics. The combination of Herz & Cook provides for a customer substituting their profile for a synthetic celebrity profile.

Claim Rejections - 35 USC § 103

2. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

3. Claims 1-2, 4-9 & 11-16 are rejected under 35 U.S.C. 103(a) as being unpatentable over Herz, (U.S. Pat # 5,758,257), in view of Shapira, (U.S. Pat # 7,058,806).

Considering claim 1, the claimed method for making a recommendation in a lifestyle recommendation machine, the machine comprising:

‘providing a celebrity profile of a celebrity to a user’, is met by the teachings of Herz, col. 49, lines 1-6, which teaches that “each customer could adopt the customer profiles of other individuals or programs such as ‘celebrity’ profiles including the viewing preferences of different celebrities”.

‘making a recommendation to the user for an item, service, and/or event based on the celebrity profile’, reads on the operation of the agreement matrix which creates a list of recommended programs for a customer based on the profile for the customer, which in this case, would be the instant celebrity profile adopted by the customer, col. 9, lines 61-67 thru col. 10,

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lines 1-20; col. 47, lines 21-50. It is pointed out that the claimed, 'making the recommendation' corresponds with the creating of the list of recommended programs using the agreement matrix.

'reporting the recommendation to the user through the celebrity while simultaneously displaying an image of celebrity', reads on the disclosure of Herz of **presenting** the most desirable video programs one or more 'virtual channels' customized for the customer", col. 47, lines 35-42. Also, Herz at col. 45, lines 37-50 discloses, "An EPG or display guide 914 listing the available selections **is provided**. In accordance with the invention, the **display guide** is either **modified** to include fields for virtual channels, or else the recommended programming is highlighted in an obvious manner".

As for the additionally claimed, 'while simultaneously displaying an image of the celebrity', Herz does not discuss any images associated with a celebrity or any other profile. Nevertheless Shapira is in the same field of endeavor and discloses associating an image with a profile, see Fig. 4. Also Shapira goes on to teach a system that matches customers with profiles of customers with similar interests, col. 9, lines 1-45. It would have been obvious for one of ordinary skill in the art at the time the invention was made, to modify Herz with the teachings of Shapira associating an image with each profile, at least for the desirable benefit of giving the user a visual confirmation of the instant profile. Thus the combination of Herz and Shapira provides for presenting a list of recommended programs to a customer based on a celebrity profile, while displaying an image associated with the instant celebrity.

Considering claim 2, the recommendation is for TV programming in Herz.

Considering claims 4 & 11, As for the 'recommending comprises playing accompanying audio', Shapira teaches that the recommendation announcement may include a voicemail, col. 4, lines 60-67. Shapira also discloses that audio/visual information may be included in the recommendation, col. 11, lines 1-12. The visual including a video would have been an obvious modification, in order to provide more information about the client-user that can observed in a still image.

Considering claims 5 & 12, Shapira discloses that each profile may include an associated still image, (Fig. 4; col. 8, lines 63-67 thru col. 9, lines 1-10).

Considering claims 6 & 13, the claimed 'textual message' reads on any headline or title in Herz or Shapira, which indicates to the customer that they are receiving recommendation information. However, to the extent that Herz does not explicitly show a textual message which announces the recommendation, Official Notice is taken that at the time the invention was made, proving a headline, heading or title was well known in the art. It would have been obvious for one of ordinary skill in the art at the time the invention was made, to modify Herz using a headline, heading or title, at least for the desirable advantage of more explicitly indicating to the customer that a recommendation is/will be displayed to the screen or is available.

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Considering claims 7 & 14, see Shapira col. 11, lines 1-10.

Considering claim 8, the claimed elements of a lifestyle recommendation device that correspond with subject mentioned above in claim 1, are likewise treated. As for the claimed, 'means for obtaining a celebrity profile form a external source ad storing the celebrity profile on the lifestyle recommendation device', Herz teaches that the customer may choose celebrity profile, but does not explicitly teach that the celebrity profile is stored at the customer's STT. Nevertheless, Herz teaches that multiple customer profiles may be stored at the customer's STT (col. 25, lines 10-15; col. 45, lines 10-67) and that information need to generate the agreement matrix may be downloaded from the headend. It would have been obvious for one of ordinary skill in the art at the time the invention was made, to modify Herz with the feature of downloading the celebrity profile and storing at the customer, at least in order to take advantage of the one-way features of Herz, wherein the agreement matrix is generated at the instant customer's STB, col. 40, lines 22-67 thru col. 41, lines 1-18.

Considering claim 9, the claimed element reads on Herz, col. 46, lines 24-60.

Considering claim 15, the claimed program storage device readable by machine tangibly embodying a program of instructions executable by a machine to perform the method steps as discussed in the rejection of claim 8, reads on disclosure of Herz, col. 40, lines 42-60; col. 46, lines 24-60.

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Considering claim 16, the claimed program product embodied in a computer-readable for making a recommendation in a lifestyle machine as discussed in claim 8, reads on the software disclosed in Herz, col. 40, lines 42-60; col. 46, lines 24-60.

4. Claims 17-18 & 23 are rejected under 35 U.S.C. 103(a) as being unpatentable over Herz, in view of Cook, (U.S. PG-PUB 2003/0193504).

Considering claim 17, the claimed method for making a recommendation in a lifestyle recommendation machine, the machine comprising:

Herz, col. 49, lines 1-6, teaches that “each customer could adopt the customer profiles of other individuals or programs such as ‘celebrity’ profiles including the viewing preferences of different celebrities”.

However, Herz does not discuss whether a synthetic celebrity profile may be created. Nevertheless Cook is directed to creating synthetic profiles, (Abstract; Para [0039] & [0049-0058]). It would have been obvious for one ordinary skill in the art at the time the invention was made, to modify Herz with the feature of creating a synthetic profile for the advantage of a profile being created with the user choosing desired characteristics attributes, as disclosed by Cook, Para [0002-0011].

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‘making a recommendation to the user for an item, service, and/or event based on the celebrity profile’, reads on the operation of the agreement matrix which creates a list of recommended programs for a customer based on the profile for the customer, which in this case, would be the instant celebrity profile adopted by the customer, col. 9, lines 61-67 thru col. 10, lines 1-20; col. 47, lines 21-50. It is pointed out that the claimed, ‘making the recommendation’ corresponds with the creating of the list of recommended programs using the agreement matrix.

‘reporting the recommendation to the user through the celebrity while simultaneously displaying an image of celebrity’, reads on the disclosure of Herz of **presenting** the most desirable video programs one or more ‘virtual channels’ customized for the customer”, col. 47, lines 35-42. Also, Herz at col. 45, lines 37-50 discloses, “An EPG or display guide 914 listing the available selections **is provided**. In accordance with the invention, the **display guide** is either **modified** to include fields for virtual channels, or else the recommended programming is highlighted in an obvious manner”.

Considering claim 18, Herz teaches that the customer may choose celebrity profile, but does not explicitly teach that the celebrity profile is stored at the customer’s STT. Nevertheless, Herz teaches that multiple customer profiles may be stored at the customer’s STT (col. 25, lines 10-15; col. 45, lines 10-67) and that information need to generate the agreement matrix may be downloaded from the headend. It would have been an obvious modification of Herz, then, by downloading the celebrity profile and storing at the customer site, at least in order to take advantage of the one-way features of Herz (thereby obviating the requirements of a two-way

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system), wherein the agreement matrix is generated at the instant customer's STB, col. 40, lines 22-67 thru col. 41, lines 1-18.

Considering claims 23, the claimed 'textual message' would read on any headline or title in Herz, which indicates to the customer that they are receiving recommendation information. However, to the extent that Herz does not explicitly show a textual message which announces the recommendation, Official Notice is taken that at the time the invention was made, providing a headline, heading or title was well known in the art. It would have been obvious for one of ordinary skill in the art at the time the invention was made, to modify Herz using a headline, heading or title, at least for the desirable advantage of more explicitly indicating to the customer that a recommendation is/will be displayed on the screen.

5. Claims 21-22 & 24-26 are rejected under 35 U.S.C. 103(a) as being unpatentable over Herz & Cook, and further in view of Shapira.

Considering claims 21 & 24, Herz does not discuss the feature of accompanying audio with a recommendation. Nevertheless Shapira, which is in the same field of endeavor, teaches that when a profile is matched, the matched or recommended profile may be presented with accompanying audio, col. 11, lines 1-15. It would have been obvious for one of ordinary skill in the art at the time the invention was made, to modify Herz with the feature of adding

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accompanying audio to a recommendation, at least for the benefit of catching the customer's attention.

Considering claims 22 & 25-26, Herz does not discuss any images associated with a celebrity or any other profile. Nevertheless Shapira is in the same field of endeavor and discloses associating an image with a profile, see Fig. 4. Also Shapira goes on to teach a system that matches customers with profiles of customers with similar interests, col. 9, lines 1-45. It would have been obvious for one of ordinary skill in the art at the time the invention was made, to modify Herz with the teachings of Shapira associating an image with each profile, at least for the desirable benefit of giving the user a visual confirmation of the instant profile. Thus the combination of Herz and Shapira provides for presenting a list of recommended programs to a customer based on a celebrity profile, while displaying an image associated with the instant celebrity.

Conclusion

6. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

- A) Haste Teaches a service that allows users to find matching profiles on a network, such that the customer may add an image or video to their profile, col. 1, lines 45-56.
- B) Raverdy Teaches creating fictitious profiles, Para [0059].

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Any response to this action should be mailed to:

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or faxed to:

(571) 273-8300, (for formal communications intended for entry)

Or:

(571) 273-7290 (for informal or draft communications, please label
"PROPOSED" or "DRAFT")

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Reuben M. Brown whose telephone number is (571) 272-7290. The examiner can normally be reached on M-F (9:00-6:00), First Friday off.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Christopher Kelley can be reached on (571) 272-7331. The fax phone numbers for the organization where this application or proceeding is assigned is (571) 273-8300 for regular communications and After Final communications.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Reuben M. Brown



REUBEN M. BROWN
PATENT EXAMINER